

02 AUG 2000



UNITED STATES DEPARTMENT OF COMMERCE  
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In re Application of :  
Gut et al. :  
Application No.: 09/555866 : DECISION ON  
PCT No.: PCT/EP98/07911 :  
Int. Filing Date: 04 December 1998 : PETITION UNDER  
Priority Date: 05 December 1997 :  
Attorney's Docket No.: 147-202P : 37 CFR 1.137(b)  
For: Method for Identifying Nucleic Acids by :  
Means of Matrix-Assisted Laser Desorption/ :  
Ionisation Mass Spectrometry :

This is in response to the petition under 37 CFR 1.137(b) filed on 06 June 2000.

**BACKGROUND**

Applicants filed this international application on 04 December 1998, and claimed a priority date of 05 December 1997. The International Bureau transmitted a copy of the published international application to the United States Patent and Trademark Office on 17 June 1999. A Demand electing the United States was filed on 29 June 1999, which was prior to the elapse of 19 months from the priority date. Accordingly, the thirty-month time period to pay the basic national fee in the United States expired as of midnight on 05 June 2000.

Applicant filed a Transmittal Letter on 06 June 2000. The Transmittal Letter was accompanied by, *inter alia*, the required basic national fee, a surcharge under 37 CFR 1.492(e), a surcharge under 37 CFR 1.492(f) a copy of the published international application, and a copy of the international search report. The Transmittal Letter was not accompanied by an oath or declaration of the inventors or by an English translation of the international application.

Also on 06 June 2000, applicants filed the instant petition and petition fee.

**DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due

date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. This petition satisfies all of requirements (1)- (4).

Regarding requirement (1), the required reply was the filing of the required basic national fee. Said fee was submitted along with the petition. Consequently, requirement (1) has been satisfied.

Regarding requirement (2), the required petition fee accompanied the petition. As such, requirement (2) has been satisfied.

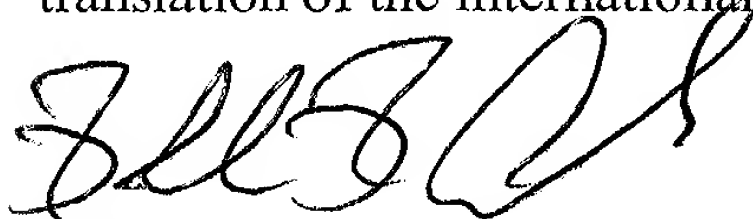
Regarding requirement (3), applicants' statement that "The entire delay in filing the papers for entry into the national phase was unintentional" does not conform to the regulatory language, which requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." However, petitioner's statement is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of requirement (3).

Regarding requirement (4), this application was not filed prior to 08 June 1995. Accordingly, no terminal disclaimer is required. As such, requirement (4) has been satisfied.

### DECISION

The petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for continued processing. Such processing will include the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an oath or declaration of the inventors and the submission of an English translation of the international application.



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